

1 **I. VALIDITY AND OWNERSHIP OF THE “BRUXZIR” MARK**

2 Q.1. Has Keating Dental Arts, Inc. (“Keating”) proven that it is more likely
3 than not that “BruxZir” is a generic term to relevant consumers (dentists) when
4 used in connection with all-zirconia crowns and bridges?

5
6 Yes ____

7 No ____

8
9 Q.2. Has Keating proven that it is more likely than not that “BruxZir” is a
10 descriptive term to relevant consumers (dentists) that lacks secondary meaning
11 when used in connection with all-zirconia crowns and bridges?

12
13 Yes ____

14 No ____

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16 Q.3. Has Keating proven by clear and convincing evidence that James R.
17 Glidewell Dental Ceramics, Inc. (“Glidewell”) abandoned its “BruxZir” mark when
18 used in connection with all-zirconia crowns and bridges?

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20 Yes ____

21 No ____

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23 Q.4. If you answered “no” to each of Questions Numbers 1, 2 and 3, has
24 Glidewell proven that it is more likely than not that “BruxZir” is a valid, protectable
25 trademark when used in connection with all-zirconia crowns and bridges?

26
27 Yes ____

28 No ____

1 Q.5. If you answer “yes” to Question Number 4, has Glidewell proven that
2 it is more likely than not that Glidewell owns “BruxZir” as a trademark when used
3 in connection with all-zirconia crowns and bridges?
4

5 Yes ____

6 No ____
7

8 **II. GLIDEWELL’S TRADEMARK INFRINGEMENT CLAIM**
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10 Q.6. If you answered “yes” to each of Question Numbers 4 and 5, has
11 Glidewell proven that it is more likely than not that Keating’s use in commerce of
12 its “KDZ Bruxer” mark is likely to cause confusion among an appreciable number
13 of relevant consumers (dentists) as to the source, sponsorship, affiliation, or
14 approval of Keating’s goods?
15

16 Yes ____

17 No ____
18

19 Q.7. If you answered “yes” to each of Question Numbers 4, 5, and 6, has
20 Glidewell proven that it is more likely than not that Glidewell has been damaged by
21 Keating’s use in commerce of its “KDZ Bruxer” mark?
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23 Yes ____

24 No ____
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1 Q.8. If you answered “yes” to Question Number 7, what amount of money
2 damages, if any, has Glidewell proven that it is more likely than not that Glidewell
3 sustained?

4
5 Amount: ____
6

7 Q.9. If you answered “yes” to each of Question Numbers 4, 5, and 6, has
8 Glidewell proven that it is more likely than not that Keating used its “KDZ Bruxer”
9 mark in commerce knowing that it was an infringement of Glidewell’s “BruxZir”
10 trademark?

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12 Yes ____

13 No ____
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KEATING'S COUNTERCLAIMS AND AFFIRMATIVE DEFENSES

Q.10. If you answered "yes" to each of Question Numbers 4, 5, and 6, has Keating proven that it is more likely than not that Glidewell is estopped from using its registered "BruxZir" trademark to prevent Keating from using the dental term "Bruxer" to identify Keating's all-zirconia crowns and bridges?

Yes ____

No ____

Q.11. If you answered "yes" to each of Question Numbers 4, 5, and 6, has Keating proven that it is more likely than not that Glidewell misused its "BruxZir" mark when used in connection with all-zirconia crowns and bridges?

Yes ____

No ____

Q.12. If you answered "yes" to each of Question Numbers 4, 5, and 6, has Keating proven that it is more likely than not that Keating has made "fair use" of its "KDZ Bruxer" mark?

Yes ____

No ____

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1 Q.13. Has Keating proven that it is more likely than not that Glidewell
2 misused its “BruxZir” mark when used in connection with all-zirconia crowns and
3 bridges?

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5 Yes ____

6 No ____

7
8 Q.14. Has Keating proven that it is more likely than not that Glidewell
9 engaged in unlawful, fraudulent or unfair business practices in violation of
10 California’s Unfair Competition Law?

11
12 Yes ____

13 No ____